



DEPARTMENT OF STATE

Washington, D.C. 20520

OGC SUB J: APPROPRIATIONS

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June 29, 1973

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MEMORANDUM

TO: EA - Ambassador Godley
PM - Mr. Thomas Pickering

FROM: L/EA - Elizabeth G. Verville
L/PM - James H. Michel

SUBJECT: Funding of [redacted]
[redacted]

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More than two months ago a cable went to our Embassies in [redacted] and Vientiane informing them that in FY 1974 we will be able to support [redacted] from FY 1973 MASF (State 65168). The Department of State acquiesced in this view in reliance upon assurances from the Department of Defense General Counsel, Mr. J. Fred Buzhardt, that the appropriate congressional committees agreed to this funding scheme.

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Upon learning of this cable, this office took the position that the expenditure of MASF funds for the support of [redacted] is not authorized under the MASF statute. Except for Vietnamese and other free world forces based in Vietnam, only "local forces in Laos" are eligible for MASF support. (Section 737(a) of the Department of Defense Appropriation Act, Pub. L. 92-570). We further expressed the view that the legal effectiveness of the above-described assurances was doubtful and that they could not be evaluated without reliable documentation.

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Since the [redacted] We have not relied on the legally questionable and politically contentious claim that the CIA may spend funds transferred

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State Dept. review completed

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from DOD without regard for the limits of DOD's original authority to spend those same funds. Once

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we do not see how we could continue to fit them into the "local forces in Laos" authority in view of the fact that they no longer will be

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The expenditure of MASF funds to support [redacted] 25X1
[redacted] presents no legal difficulty*. However, MASF support for the [redacted] for any time longer than a reasonable transition period

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* A subsidiary issue arises from the proposed obligation of FY 1973 funds for costs to be incurred in FY 1974. Normally, obligations for personal services such as those performed by [redacted] 25X6
[redacted] are recorded as the services are performed. Contracts for such services which span two fiscal years usually should evidence an obligation of funds for performance through the end of the first fiscal year and be made dependent upon the availability of funds for continued performance beyond that date. See 35 Comp. Gen. 319 (1955). Exceptions to this norm generally require statutory authorization. Cf. sec. 707 of Department of Defense Appropriation Act for Fiscal Year 1973, Pub. L. 92-570. Whether the circumstances in this case justify the obligation of current fiscal year funds for services to be rendered as much as six months hence would require careful study of the relevant agreements, an exploration of past DOD statutory authority and administrative practice, and an examination of pertinent decisions of the Comptroller General. However, because of the more fundamental legal objection occasioned by the departure of [redacted] further examination of this secondary issue would not seem warranted at this time.

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during which payment could be said to be directly related to past services in Laos, would be extremely difficult to defend. Unless we were to rely on the

25X1A [redacted] which we do not recommend, we would have nothing on which to build a legal defense except the above-described assurances of the Department of Defense General Counsel. We recognize that the burden of defending any interpretation of this statute rests primarily with the Department of Defense, but we believe you should be aware of our analysis of the case and our concerns about it.

It is possible that the congressional assurances obtained by Mr. Buzhardt are adequate to avoid later difficulties with Congress or public embarrassment. However, in the absence of reliable written records we must advise great caution in any reliance on these assurances by this Department in considering plans to use FY '73 MASF funds to support a residual

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L/EA:OTJohnson/L/PM:JHMichel:cdj:6/28/73 ext 22287, 20557

Clearance: L - Mr. Aldrich

cc: EA/LC - Mr. Rives
DOD/GC - Mr. Forman

AID/GC - Mr. Morris
CIA - [redacted]

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